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IN THE
SUPREME COURT
of the United States

OCTOBER TERM 1940

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation, *Petitioner*,
vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS,
LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN,
NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL,
HARRY ANSANA, JACK ANSANA, J. W. BEECROFT, HENRY BOYE, WILLIS
KOOGLER, LEO LYSER, LYLE LYSER, LAWRENCE NOEL, GARTH PHIL-
LIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON,
CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S
UNION, its officers and members, *Respondents*,

Petition for Writ of Certiorari

To The United States Circuit Court of Appeals for the Ninth District.

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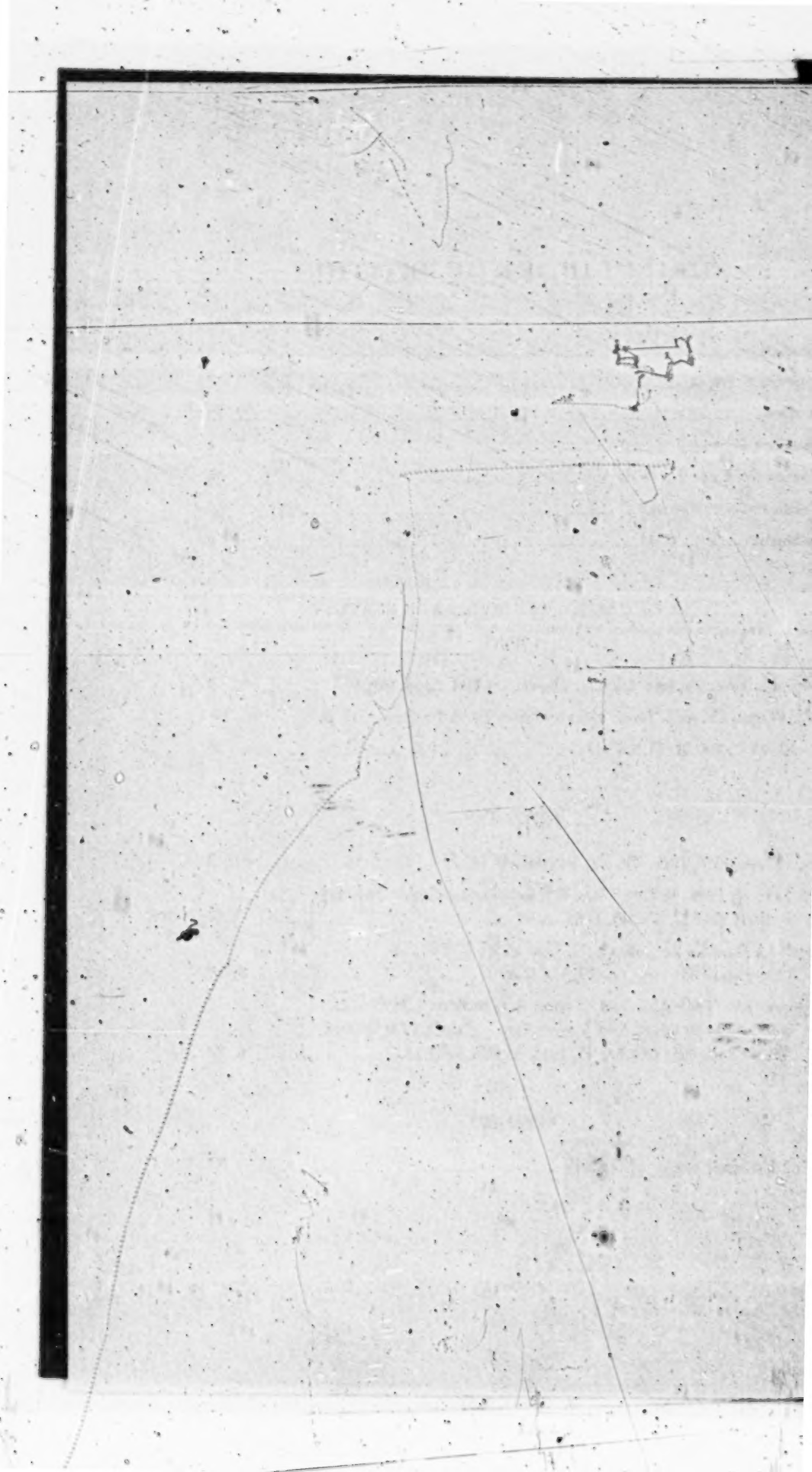
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PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHERMEN'S UNION its officers and
members,
Respondents.

**Petition To The Supreme Court Of The United
State For A Writ Of Certiorari**

To the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable, the Chief Justices, and the Associate Justices of the Supreme Court of the United States:

Columbia River Packers Association, Inc., an Oregon corporation, by and through its attorneys, Jay Bowerman and Ralph E. Moody, pray that a writ of certiorari be issued to review the ruling, judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit, in the case therein numbered 9456, in which cause the petitioner herein was appellee and the respondents herein were appellants.

OPINIONS BELOW

The opinion of the United States District Court for the District of Oregon is reported in *Columbia River Packers Assn. vs. Hinton*, 84 Fed. Supp. 971, and the opinion in the Circuit Court of Appeals for the Ninth Circuit is attached hereto as an appendix, it having not been published, and it also appears in the record at page 146-154.

JURISDICTION

The decree was made and entered in the United States District Court for the District of Oregon, June 14, 1939, (R. 104-111). The damages allowed by the decree were waived, (R. 121-124). The Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was perfected November 29, 1939, (R. 125-128). The appeal was

heard before three Circuit Judges, (R. 145). Two of the Judges concurred in rendering an opinion on March 29, 1941, (R. 146-154). Petition for Rehearing was filed April 26, 1941, (R. 155); denied May 13, 1941, (R. 155). On motion of petitioner herein, the Circuit Court of Appeals on the 13th day of May, 1941, stayed the issuance of mandate pending the determination of this petition for writ of certiorari by the Supreme Court (R. 156).

The jurisdiction of this court is invoked under section 240 (a) of the Act of February 13, 1925, title 28, section 347, U.S.C.A.

QUESTIONS PRESENTED

1. Whether the Norris-La Guardia Act prohibits United States Courts granting injunction to restrain the enforcement of a contractual provision which compels the exclusive purchase of certain commodities moving in interstate commerce to be made from particular producers and independent contractors organized into a voluntary association controlling 90% of the producers of said commodities.

2. Whether a labor dispute as defined by the Norris-La Guardia Act is involved in a controversy arising, with sole reference to a contract requiring exclusive purchase, between producers and independent contractors who are fishermen voluntarily organized into an association controlling

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90% or more of the fishermen, who capture and acquire fish and other marine products in the Pacific Ocean and its tributaries, and a corporation engaged in purchasing, processing, canning, merchandising, selling and distributing such fish and marine products in the markets of the United States and various foreign countries.

3. Where there is no controversy between producers and independent contractors who are fishermen voluntarily organized into an association or union, controlling 90% or more of the fishermen, who capture and acquire fish and other marine products in the Pacific Ocean and its tributaries, and a corporation engaged in purchasing, processing, canning, merchandizing, selling and distributing such fish and marine products in the markets of the United States and various foreign countries, over the price of fish to be paid or the price of ice or other supplies to be sold or over any other matter entering into transactions between them, save and except only the requirement of said association and its members that said corporation enter into a contract requiring it to exclusively purchase its fish and marine products from the said association and its members, does such question constitute a labor dispute as defined by the Norris-La Guardia Act?

4. The controversy involved in this case arose between fishermen, who are producers and independent contractors, and the petitioner, which does not fish but which processes

fish produced from these fishermen. The fishermen voluntarily organized an association of 90% or more of the fishermen, producing more than 90% of the fish produced in the area covered by their organization, viz: Alaska, Washington, Oregon and Northern California. Petitioner purchases such fish from the fishermen in Alaska, Washington, Oregon and California, and processes the fish in its cannery in Alaska, and its two canneries in each Washington and Oregon, and merchandizes and distributes the processed fish in the markets of the United States and certain foreign countries. The fishermen, as a condition precedent to the sale of fish by any member of their association, require each processor or dealer to enter into a contract whereby no fish may be purchased from any fishermen not a member of the association.

The question therefore is whether or not, under the above circumstances, there is a labor dispute within the meaning of the Norris-La Guardia Act, which would absolve the parties to this agreement from the liabilities and penalties created and provided for in the Sherman Act.

STATUTES INVOLVED

Sherman Anti-Trust Law and Clayton Act, Sections 1-26, title 15, U.S.C.A., 1940, Cum. Ann. Pocket Part. (July 2, 1890, 26 Stat. 209, 50 Stat. 698; October 15, 1914, 38 Stat. 780).

Act, June 25, 1984, 48 Stat. 1218-1214, Relating to Fishing Industry, Sections 521-522, title 15, U.S.C.A.

Norris-La Guardia Act, March 23, 1932, c. 90, 47 Stat. 70-73, Sections 101-114, title 29, U.S.C.A.

STATEMENT

The statement of facts may best be made in a summarized statement of Findings of Fact made by the District Court for the District of Oregon.

Petitioner is a corporation organized and doing business under the laws of Oregon, having its principal office and place of business at Astoria in said state, and is engaged in purchasing, processing, canning, merchandizing and distributing fish and other products in the Pacific Ocean and its tributaries, and in said connection acquires, transports, processes, cans, sells, disposes of, and distributes marine products caught and acquired from the Pacific Ocean and its tributaries in the markets of the United States and the States thereof, and in various foreign countries, including England, Australia, Germany and other countries.

In carrying on its business it purchases fish and other products of the Pacific Ocean and its tributaries from various and sundry producers and independent contractors who capture and acquire the same, and transport the same within and without the State of Oregon, and dispose of the


same to the petitioner. Said producers and independent contractors are fishermen, and in the operation of their several businesses of fishing for the purpose of capturing and acquiring fish and other marine products, owned, or under lease boats, controlled boats, nets, and other fishing gear and appliances severally, and individually, of a value ranging from \$100 to \$15,000; said individual fishermen not only own, or under lease control their fishing equipment, but to a substantial extent employ the labor of others to assist them in carrying on their fishing operations. Said fishermen are directly employed by no one, but are producers and independent contractors, who fish when and where they choose, and dispose of their fish to whomever they select, limited only by voluntary agreement among themselves as members of the respondent, The Pacific Coast Fishermen's Union.

In each area of the states of Oregon, Washington, California and the territory of Alaska adjacent to which fish and other marine products of the Pacific Ocean and its tributaries are captured, there is an established market price for the various products, and there are a number of established purchasers, such as petitioner, who purchase from said fishermen and other fishermen their various products, paying therefor the established market price.

In carrying on its business it has been the practice of the petitioner along with other dealers to purchase fish and

other products of the Pacific Ocean and its tributaries, which have been caught, captured and reduced to possession and ownership by various and sundry persons, all of which fish, and other marine products have been caught, captured and reduced to possession and ownership by fishermen either on the Pacific Ocean within and without the territorial jurisdiction of the states of Oregon, California and Washington, or upon navigable streams thereof, which said fish and other marine products have been transported from the point of capture to land docks, wharfs and other receiving instrumentalities, on or in the vicinity of land, for sale and delivery to petitioner and other dealers and processors; thereby petitioner has been engaged in commerce between the several states and territories of the United States.

In transacting its business, petitioner owns and operates two large ocean-going steamships, and a large number of smaller ocean-going tenders, and other marine facilities, and also operates two plant factories and processing institutions in Alaska, two in each of the states of Oregon and Washington, at which it purchases, processes, cans and places in condition for sale and distribution its products in the various states and territories of the United States; and petitioner also has receiving stations in the states of Oregon and Washington, where it purchases and receives fish and transports the same to its canning and processing plants in



Washington and Oregon, and petitioner sells, and for many years last past has sold and distributed its products in the states and territories of the United States and in England and Continental Europe and Australia. For more than fifty years petitioner and its predecessor in business, has purchased marine products taken and acquired from the Pacific Ocean and its tributaries which it and its predecessor processed, canned and otherwise placed in condition for sale and disposal in interstate and foreign commerce.

In carrying on its business it has been and is the necessary practice of petitioner to contract in advance for the sale of its products in interstate commerce, and in said connection entered into contracts for the sale and disposal of shad, shad-roes, salmon and other products of the Pacific Ocean and tributaries and waters adjacent to the states of Washington and Oregon and lying within and without the territorial limits thereof. Said contracts were entered into in anticipation of a free, open market for the purchase of raw materials from fishermen engaged in fishing in said waters.

Certain of the respondents, and many other persons, heretofore organized an association or organization known as "The Pacific Coast Fishermen's Union." A local branch of such organization known as "The Umpqua Local of The Pacific Coast Fishermen's Union" is located at Reedsport, Oregon. The Pacific Coast Fishermen's Union is com-

posed of several hundred persons who are residents and inhabitants of Alaska, Oregon, California and Washington. A number of the members are aliens and under the laws of the States of Washington and Oregon are not permitted to fish within the territorial jurisdiction of said states. A large number of the members of said organization conduct their fishing operations in the Pacific Ocean beyond the territorial limits of said states, and after capturing fish in said ocean, bring the same to the markets in the adjacent land areas.

In the membership of said organization are a number of fishermen conducting a fishing business in navigable bays, rivers and other streams in Oregon and Washington which are tributaries to the Pacific Ocean, which fishermen, who fish in the Pacific Ocean and the adjacent waters, own or lease boats they operate, and own the nets and other gear used in their operations, but each thereof operates his business according to his own desires uncontrolled by petitioner or any one else save and except the domination and control of said organization.

The navigable waters of the Umpqua River and its tributaries are one of the principal sources of supply of shad; said shad is available in said navigable waters from a period of approximately sixty days, between April and June of each year. From the shad fish a valuable product known as "shad-roë" is taken, which petitioner and other processors

dispose of either in the fresh market or by processing and canning the same. Petitioner has and for many years last past had a large and valuable business in processing, canning, selling and disposing of canned shad, as well as canned shad-roë; in anticipation of the business in the usual course, as it had theretofore been transacted, petitioner contracted to sell a large amount of said canned shad and canned shad-roë, which product petitioner anticipated would be produced from shad captured in the navigable waters of the Umpqua and Smith Rivers.

Under the laws of Oregon the season for commercial fishing in said waters opened on April 20, 1939, and salmon, shad and other commercial fish were in said waters in commercial quantities in said time; but said waters are not only the principle source of the supply of shad for petitioner's operations, but also a substantial source of supply of salmon and other marine products.

In anticipation of carrying on its business as it had theretofore done, petitioner leased from the port authorities certain dock facilities, constructed thereon a cold storage plant and other facilities for the reception of, purchasing, storing and handling of said fish products, and erected thereon net racks, tanning tanks and adjacent thereto a mooring place for the convenience and accommodation of the fishermen selling their products to petitioner. Petitioner placed operations in charge of competent men and pre-

pared to carry on the fish dealing operations at Reedsport, Oregon, as it had done theretofore.

On and immediately following April 20, 1939, a large number of fishermen began fishing in said waters and captured a substantial amount of fish and sold the same to petitioner at the regular established market price. The fishermen continued their operations until April 29, 1939, and continued to sell said fish to petitioner to and including said date. Thereafter respondents called all fishermen fishing in said waters to cease selling any fish to petitioner. Prior to said date respondents demanded of petitioner that it enter into a contract with said organization wherein and whereby petitioner would purchase no fish in said area from any one not a member of said organization, that all fishermen fishing in said waters are members of said organization, but petitioner being advised that execution of said contract would constitute a violation of the laws of the United States, declined and refused to sign the same; whereupon the controlling authority of said organization, through threats, intimidation and coercion induced the fishermen fishing in said waters to decline and refuse to sell to petitioner any fish caught in said waters, thereby effectually preventing petitioner from buying any fish caught in said waters. Until said action petitioner had been able to purchase and acquire its full requirements of fish from said waters from fishermen who were ready, able and willing to

sell their fish to petitioner, and who would sell their fish to petitioner except for the intimidation, coercion and threats of said respondents. In carrying out their unlawful purpose, the fishermen were threatened with fines, penalties and expulsion from said organization, which prevented their carrying on their fishing operations and the transaction of their business, and the fishermen dealing with petitioner were prevented from carrying on the business of fishing or marketing the same. The Pacific Coast Fishermen's Union and other respondents who control its operation threatened the fishermen operating at Reedsport and on the Umpqua and Smith Rivers with fines and penalties upon such thereof as would sell fish to petitioner.

The market price of fish in said area was established by the Pacific Coast Fishermen's Union in agreement with various dealers, including petitioner, who purchased fish in said area, and there was no disagreement between petitioner and the fishermen selling fish over the price thereof, or over any other matter entering into the business between petitioner and said fishermen. Except for the interference by said Pacific Coast Fishermen's Union with business relations between petitioner and said fishermen, said fishermen would have continued to catch fish, sell and deliver the same to petitioner.

The uniform interpretation and practise under the constitution and by-laws of the Pacific Coast Fishermen's

Union is that the organization assumes jurisdiction over troll fishing at Alaska, and trolling, gill-netting and crabbing along the coast of British Columbia and Puget Sound and along the coasts of the states of Washington, Oregon and California, exclusive of the Columbia River and its tributaries. It controls 90% of the troll fishing in these areas and 100% control of all types of fishing in the Umpqua and Smith Rivers. The jurisdiction of the Pacific Coast Fishermen's Union as far south as Crescent City, California, was enforced in 1938 against petitioner to the extent where its boycott of petitioner was so efficient that petitioner withdrew its receiving station from said area. The Pacific Coast Fishermen's Union so far controlled the Coos Bay area that in 1938 it prevented fishermen who had caught fish in international waters from selling or delivering their fish at Marshfield, Oregon, and by picketing the waterfront made it impossible for non-member fishermen to receive ice, laundry and living supplies from merchants and others desiring to trade with them. By threatening to boycott business in Alaska they induced a Seattle fish buyer who proposed to purchase from outside fishermen, to withdraw his purchasing office at Marshfield, thereby completely closed said area to all fishermen excepting those belonging to the Pacific Coast Fishermen's Union.

The Pacific Coast Fishermen's Union sought a complete monopoly of any sales and delivery of fish at West-

port on the Pacific coast of the state of Washington in June 1937, and continued to prevent fishermen who had captured fish in the international waters opposite of the states of Oregon and Washington from delivering and selling their fish on land at or near the vicinity of Westport, until enjoined from such practices by the courts of the state of Washington. Said union completely closed the mouth of the Columbia River and its estuary of said river to all troll fishermen not members of said organization, and completely and effectively prevented fishermen who caught their fish in the Pacific Ocean and particularly in the international waters opposite the states of Oregon and Washington from selling or delivering their fish to any dealer at Astoria, Oregon, Ilwaco, Washington, or the vicinity thereof until a substantial amount of fish offered for delivery had spoiled, until finally a Seattle buyer received the merchantable portion of said fish at Ilwaco, Washington, and transported the same to Seattle, and said condition continued until the close of the fishing season of 1938. A number of residents of Astoria, Oregon, who had followed troll fishing for many years were effectively prevented from selling their troll-caught fish in the states of Oregon and Washington.

The Pacific Coast Fishermen's Union procured contracts with all of the buyers of fish located in Oregon and along the Columbia River in Washington, whereby the

buyers would not purchase fish from any one not a member of the Pacific Coast Fishermen's Union, having induced the signing of said contracts by threats that it would prevent all its members from dealing with any buyer, unless he executed a contract containing such exclusive features. By the terms of such contracts neither the Pacific Coast Fishermen's Union nor any of its members undertook any obligation whereby any member of said Pacific Coast Fishermen's Union would fish or sell any fish to any one. Said contract expressly prohibited the buying, or purchasing from any one not a member of the said Pacific Coast Fishermen's Union.

Its control of the Umpqua River and the Smith River was and is complete and said area produces more than 1,000,000 pounds of fish per annum.

The exclusive feature of the contract entered into in 1936, 1937, 1938 by the Pacific Coast Fishermen's Union and its members, and all or practically all of the buyers of fish in Oregon and coast points in Washington and in California as far south as Crescent City, is substantially the same contract demanded by said union and its members for the year 1939, which is as follows:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or along side non-union employees."

It is conceded that said language means that no buyer signing said contract is permitted to purchase any fish from any person not a member of said Pacific Coast Fishermen's Union.

There is an open, competitive market for fish and other marine products. The exclusive contract required by the Pacific Coast Fishermen's Union as a condition precedent to purchasing any fish from any of its members is intended to create a monopoly in fishing and other marine products offered for sale and sold in the Pacific coast states and territories, and it is against the interests of the public and violates the rights of persons not members of said organization, including other fishermen, petitioner and other processors dealings in fish and other marine products.

The Pacific Coast Fishermen's Union and its members entered into a plan, scheme and conspiracy having for its purpose the creation of a monopoly along the coasts of the states of California, Oregon and Washington and Alaska in capturing, selling, dealing and processing and marketing fish and other marine products, and products produced therefrom against the interests of the public and all other persons not belonging to said organization, and the purpose in requiring said contracts as hereinbefore described is to effectually control and monopolize the capture, taking, selling, dealing in, and processing fish and other marine

products in said states and territory and preventing other persons entering said business either as fishermen, processors or otherwise.

The Pacific Coast Fishermen's Union is not a labor organization, but is a trade organization and substantially conforms to the requirement of section 521, 522, title 15, United States Code Annotated, authorizing the formation by fishermen for the purpose of carrying on their business.

Petitioner is not engaged in fishing, but purchases fish from fishermen and produces a large amount of canned fish from its processing plants in Alaska and from its floating cannery, and produces a large amount of canned fish from its two plants in the state of Washington and its two plants in the state of Oregon, and provides more than 60% of all the processed fish produced in the State of Oregon as well as a substantial amount of processed fish produced in the State of Washington. As a condition preceded to buying any fish from any member of the Pacific Coast Fishermen's Union, said organization has required and now requires that petitioner enter into a contract whereby it will purchase no fish from any person not a member of said organization.

There was no controversy between the petitioner and the Pacific Coast Fishermen's Union, or any of its members over the price of fish to be paid, or the price of ice or

other supplies to be sold or over any other matter entering into transactions between petitioner and any of the respondents, save and except only the requirement by the Pacific Coast Fishermen's Union and its members that said exclusive contract be entered into. Said members of the Pacific Coast Fishermen's Union are willing to sell their products to petitioner, and would do so, except for the interference of the Pacific Coast Fishermen's Union and other members thereof. (Record p. 54-95).

SPECIFICATION OF ERRORS TO BE URGED

1. In holding that in the case at bar the Norris-La Guardia Act (29 U.S.C.A., sections 101-115) applied.

2. In holding that in the case at bar the courts of the United States under the provisions of the Norris-La Guardia Act are without jurisdiction to issue a temporary or permanent injunction.

3. In holding that in the case at bar the courts of the United States are prohibited by the Norris-La Guardia Act from issuing an injunction.

4. In holding that in the case at bar there was involved a labor dispute.

5. In holding that the case at bar is controlled in prohibiting an injunction by the decision of this court in Milk Wagon Driver's Union v. Lake Valley Farm Products, 311 U. S. 91, 85 L. Ed. 91, 61 S. Ct. 122.

6. In holding that in the case at bar the United States District Court granted the injunction "without jurisdiction to do so," and in holding that "the decree granting an injunction must be stricken."

7. In reversing the decree of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals in the case at bar decided an important question of federal law which has not been, but should be, settled by this court.

2. The decision of the Court of Appeals in the case at bar decides a federal question in conflict with applicable decisions of this court.

3. The question whether the anti-trust laws of the United States are applicable to the facts found to exist in the case at bar is of such paramount public importance and interest as to call for an exercise of this court's power of supervision over this cause.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the ruling, order, judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit should be granted and, when so granted, this Court review the whole and entire cause.

JAY BOWERMAN,

RALPH E. MOODY,

Attorneys for Petitioner.

APPENDIX

NO. 9456

**United States
Circuit Court of Appeals
For the Ninth Circuit**

MARCH 29, 1941

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LeROY CHENOWITH, WALTER WEAVER, O. TANNER, O.
H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEE-
CROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE
LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHERMEN'S UNION its officers and
members, *Appellants.*

vs.

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Appellee

**Upon Appeal from the District Court of the
United States for the District of Oregon.**

Before: GARRECHT, HANEY AND STEPHENS, *Circuit Judges.*
HANEY, *Circuit Judge.*

Appellee was successful in its suit brought under the anti-trust laws to obtain a decree enjoining appellants from interfering with appellee in its purchase of fish and other marine products, and adjudicating that all contracts entered into between the Pacific Coast Fishermen's Union and processors and dealers, whereby the latter agreed not to purchase such products from persons not members of such union, to be void.

The Pacific Coast Fishermen's Union, hereafter called the union, is an organization of persons engaged in fishing, and is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations. The union is also a member of the Maritime Federation of the Pacific which is a federation of labor organizations of the Pacific Coast including the International Longshoremen and Warehousemen's Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union and other organizations.

The union issues charters to various local unions in various ports of the States of Oregon and Washington, and the contracts hereinafter referred to are entered into between the packers of and dealers in fish and the union or such locals.

The packers of and dealers in fish belong to an organiz-

ation called the Commercial Fisheries Association. Such association has throughout its existence, bargained with the Union, and has been the collective bargaining agency for the packers and dealers. The Union and the Association reach an agreement as to the terms of the contracts to be entered into between it or the locals and the packers of and dealers in fish.

It has been and is the practice of the packers of and dealers in fish to purchase fish and other marine products of the Pacific Ocean and its tributaries from various fishermen who are independent contractors. About 90% of the fishermen belong to the union. We may assume that the union has an effective monopoly on the supply of fish caught, and that interstate or foreign commerce is affected thereby, so that the facts regarding these matters need not be stated. Of course there is nothing to prevent operation of their own fishing fleets by the packers.

The Union had procured contracts with the packers and dealers for the 1936, 1937 and 1938 seasons which contained the provision:

"That is is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It is conceded that such provision prohibited the packers and dealers from purchasing from any one but members of the union.

The navigable waters of the Umpqua River and its tributary Smith River are principal sources of supply of shad. The shad is available there for about 60 days each year beginning in April. Under the laws of Oregon the season for commercial fishing opened on April 20, 1939. Fishermen captured fish and sold them to appellee from that date until April 29, 1939. Appellee withdrew from the Commercial Fisheries Association, and declined to enter into a contract with the union on the ground that its execution thereof would violate the anti-trust laws of the United States. The union thereupon, by threats, intimidation and coercion induced the fishermen not to sell fish to appellee, and prevented appellee from buying any fish caught in the waters mentioned, until May 4, 1939, when the court below issued a temporary restraining order against appellants. Appellee was damaged in the amount of \$600 by the refusal to sell and deliver fish to it for the period from April 29, 1939 until May 4, 1939.

The court below held that the contracts entered into were void because in restraint of trade, that appellants entered into a plan, scheme and conspiracy in restraint of trade. It enjoined appellants interfering with appellee in the purchase of fish. This appeal followed.

Appellants contend that the injunction is prohibited by the Norris-La Guardia Act (29 U.S.C.A. Secs. 101-115), because of the failure to comply with the procedural prere-

quisites stated in the act. Appellee makes no argument in reply to this contention.

Section 7 of that act (29 U.S.C.A., Sec. 107) provides in part:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after * * * findings of fact by the court, to the effect — — * * *"

Five matters are mentioned in the statute. The court below did not make findings as to one or more of them. If this is a "case involving or growing out of a labor dispute" as defined in the act, then the court below lacked jurisdiction to issue the injunction.

The particular words of section 7 which are in controversy are "in any case involving or growing out of a labor dispute, as herein defined." The definitions are given in Sec. 13 of the act (29 U.S.C.A., Sec. 113) as follows:

"When used in this chapter, and for the purpose of this chapter—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1)

between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined.)

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee • • •"

There are two constructions which might be given to Sec. 13. One is that subdivisions (b) and (c) are applicable to the whole of subdivision (a). The other is that subdivisions (b) and (c) are applicable only to the last clause

of subdivision (a). Lacking the legislative history of the act, we think we should not decide which construction is correct unless necessary.

The trial court's holding is that there was no "labor dispute" because "terms or conditions of employment" were not involved. We believe the trial court too narrowly construed the act.

The fact that the members of the union were not, strictly speaking, "employees" of appellee or other packers and dealers does not preclude the holding that a labor dispute existed. *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323; *New Negro Alliance v. Grocery Co.*, 303 U. S. 552; Sec. 13 (c) of the act. It must be conceded that there was a "controversy." Therefore if such controversy was "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment" then there was a "labor dispute" as defined by Sec. 13 (c) of the act.

New Negro Alliance v. Grocery Co., *supra*, is distinguished on its facts. There the controversy was over the race of the people whom the company might or did employ. Here, no such controversy was present, because appellee did not "employ" persons as that word is used in the strict sense. We believe that *Drivers' Union v. Lake Valley Co.*,

311 U. S. 91 is controlling and compels the conclusion that a "labor dispute" in fact existed. There as here, the controversy was between what we call "employers" on one side, and independent contractors on the other side. There are minor distinctions between the two cases such as the fact that the independent contractors buy from the employers in one, whereas here they sell to the employers, but we believe they are insufficient to change the rule announced in the Lake Valley case.

Independently of that case, however, we think the act in question is applicable. In construing the words "terms or conditions of employment" the trial court apparently limited them to mean the ordinary case where one person hired out to another for a stipulated wage or salary. We think such a narrow construction is not justified. The words "terms or conditions" need no further explanation. It is obvious that the controversy over the question as to whether appellee should purchase fish from members of the union only, was a "term" or "condition." The word "employment" is defined in Webster's New Int. Dict. (2nd Ed.) p. 839 as follows:

"1. Act of employing, or state of being employed; as to seek employment.

"2. That which engages or occupies; that which consumes time or attention; also, an occupation, profession, or trade; service; as agricultural employments."

It can be seen that if the word "employment" is used in several of the senses above mentioned, it is broad enough to cover the situation disclosed here. "The words of a statute are to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears." *Miller v. Robertson*, 266 U. S. 243, 250. See also: *Old Colony Co. v. Comm'r*, 301 U. S. 379, 383. We are unable to find any indication that Congress gave the word a restricted meaning.

The above holding obviates decision of other points presented. The injunction, we think, was granted without jurisdiction to do so, and the portion of the decree granting an injunction must be stricken. We remand the case to the court below for further consideration regarding the remainder of the decree, to determine whether the bill should be dismissed in view of *United v. Hutcheson*, et al—U. S. —, February 3, 1941, or whether parts of it may stand.

Reversed and remanded with directions to further proceedings in accordance with the views herein expressed.

IN THE
SUPREME COURT
of the United States

OCTOBER TERM 1940

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LeROY CHENOWITH, WALTER WEAVER, O. TANNER, O.
H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEE-
CROFT, HENRY BOYE, WILLIS KOGLER, LEO LYSTER, LYLE
LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHERMEN'S UNION its officers and
members,
Respondents.

**BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

To The United States Circuit Court of Appeals for the Ninth District.

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BRIEF

In support of the petition for the issuance of a writ of certiorari herein, petitioner respectfully submits the following considerations:

I.**Findings of Fact Conclusive**

In compliance with Equity Rule 70 $\frac{1}{2}$, the District Court, "the court of first instance," did "specially" and specifically make and enter of record Findings of Fact and Conclusions of Law in this cause, and on the appeal taken to the Circuit Court of Appeals from the decree, the clerk did "include" such Findings and Conclusions "in the record" which was "certified to the Appellate Court." (R. 54-95).

The Transcript of Record contains no agreed statement of facts, and none of the evidence or testimony taken in the cause; therefore, these Findings of Fact are conclusive on the Appellate Courts.

Lauf v. E. G. Shinner & Co., 303 U. S. 323, 327.

Interstate Circuit v. United States, 304 U. S. 55, 56-57.

II.

Under Findings of Fact No Labor Dispute Involved in This Case.

Findings of Fact, II (R. 55-56); XIV (R. 65-66); XX, XXI, XXII (R. 75-76).

III.

Pacific Coast Fishermen's Union Is Composed of Fishermen Who Are Producers and Independent Contractors.

Findings of Fact, II (R. 55-56); VI, VII (R. 58-60); XV, XVI (R. 66 - 69); XXI, XXII, (R. 75 - 76); XXVIII (II), (R. 81 - 82); XXXV (XVIII), XXXVI (XIX), XXXVII (XX), (R. 85-88).

IV.

Pacific Coast Fishermen's Union Is Not a Labor Organization But a Trade Organization and Conforms to the Requirements of Section 521 and 522, Title 15, U. S. C. A.

Findings of Fact, XX (R. 75); XL (XXIII), (R. 89-90).

Pacific Coast Fishermen's Union Created and Maintained a Monopoly and Fixed the Prices for the Product in the Fish Industry in Alaska, Oregon, Washington and California in Violation of the Anti-Trust Laws of the United States.

Findings of Fact, II (R. 55-56) ; VI, VII, (R. 58-60) ; and XI to including XXXVII (XX), (R. 62-88).

The Circuit Court of Appeals in its opinion, herein sought to be reviewed, said:

"We may assume that the union has an effective monopoly on the supply of fish caught, and that interstate or foreign commerce is affected thereby," (R. 146, 147).

The facts so found constitute a violation of the Anti-Trust laws of the United States under the decision of this court.

United States v. Brims, 272 U. S. 549.

United States v. Trenton Potters, 273 U. S. 392.

Local 167 v. United States, 291 U. S. 293.

Interstate Circuit v. United States, 306 U. S. 208.

United States v. Borden, 308 U. S. 188.

Ethyl Gasoline Corp. v. United States, 309 U. S. 436.

United States v. Socony-Vacuum Oil Co., 310 U. S. 150.

Fashion Originator's Guild of America v. Federal Trade Comm. (March 3, 1941), 85 L. Ed. 557, 61 S. Ct. 703.

Millinery Creator's Guild v. Federal Trade Commission, (March 3, 1941), 85 L. Ed. 563, 61 S. Ct. 708.

VI.

The Fishing Industry Act (June 25, 1934, c. 742, 48 Stat. 1213, sections 521-522, Tit. 15, U.S.C.A.), Does Not Operate to Repeal the Sherman Anti-Trust Act.

The fact, the trial court found, in its findings XX (R. 75) and XL (XXIII) (R. 89-90), that, the Pacific Coast Fishermen's Union substantially conforms to section 521 and 522, title 15, U.S.C.A., does not either exempt or exclude its activities from the operation or provisions of the Sherman Anti-Trust Act. Such question is settled and determined by this court in *United States v. Borden Co.*, 308 U. S. 188.

VII.

The Decision of This Court in Milk Wagon Driver's Union v. Lake Valley Farm Products, 311 U. S. 91, 85 L. Ed. 91, 61 S. Ct. 122, Is Not Controlling in the Case at Bar.

The Circuit Court of Appeals erred in its ruling and holding that:

"We believe that Drivers' Union v. Lake Valley Co., 311 U. S. 91 is controlling and compels the conclusion that a 'labor dispute' in fact existed. There, as here, the controversy was between what we call 'employers' on one side, and independent contractors on the other side." (R. 152).

This statement manifests its fallacy, as there cannot be under the Norris-La Guardia Act a "controversy" "between employers on one side and independent contractors on the other side" which would constitute under the Norris-La Guardia Act a "labor dispute." Were that so the Norris-La Guardia Act has completely repealed the Federal Anti-Trust Laws.

In the Driver's Union-Valley case this court found from the evidence, as did the District Court therein, that the persons therein characterized as "vendors" of the milk, were not independent contractors, but "were actually re-

garded as employees of the plaintiff's dairies." 85 Law Ed. 91, 95, notes 9, 10 and 11.

The rules of law announced under the facts found to exist in the Driver's Union case have no application to the facts found to exist in the case at bar.

VIII.

United States v. Hutcheson, (February 3, 1941, 85 L. Ed. 422, 61 S. Ct. 463), **Not Controlling or Applicable to the Case at Bar.**

The Court of Appeals in the closing part of its opinion herein refers to the case of *United States v. Hutcheson*, (R. 146, 154).

The Hutcheson case is based upon the conceded premise that the criminal indictment therein arose out of a "labor dispute," as defined by the Norris-La Guardia Act. The majority opinion said "concededly an injunction either at the suit of the government or employer could not issue," 85 Law Ed. 422, 61 S. Ct. 463, 464.

In the Hutcheson case the concrete question was whether the use of conventional peaceful activities by a union in controversy with a rival union over certain jobs, is a violation of the Sherman Law for which an indictment would lie. The majority and dissenting opinion discussed the ques-

tion only in such premises. It is apparent the *Hutcheson* case is without any application to the record in the case at bar.

IX.

The Question Involved Herein Is of Such Paramount Public Importance and Interest as to Call for an Exercise of This Court's Power of Supervision Over the Cause.

This case presents a question of very great importance to the public and to all business and other interests, whether large or small, because of the extended application the court of appeals in this case gave to the term "labor dispute" as defined in the Norris-La Guardia Act. If the rule announced by the court of appeals in its opinion is sound and correct under the facts found to exist in this case, it then necessarily follows that the rule announced in *United States v. Hutcheson* is so extended as to prevent the civil enforcement of any of the provisions of the Anti-Trust Law relating to monopoly and fixing prices in commodities moving in Interstate Commerce. And further, the interest of the public in the question presented cannot be better stated than as expressed by United States District Judge McColloch in his opinion deciding this case in the District Court as follows:

"I ask this question in behalf of the consuming public whose interests are paramount in determining any controversy arising under the Anti-Trust Laws (Paramount Famous Lasky Corporation, et al v. United States, 1930, 282 U. S. 30, 51 S. Ct. 42, 75 L. Ed. 145) :

"In any year when defendant's members did not 'choose to fish,' how would the consuming public gets its needs of salmon, tuna or other marine products from North Pacific waters? Since the union's contract does not guarantee a supply of fish, where would the canneries get fish, having agreed to look to the union for the sole supply? Surely reasonable men will agree that the public's interest in an important item of food supply should not be put in such jeopardy. If an exclusive and monopolistic arrangement, as here insisted upon, can be legally made as to fish, it can be made as to milk, as to meat, and as to other necessities of life." (Columbia River Packers Ass'n. v. Hinton, 84 Fed Supp. 970 975).

In view of the foregoing consideration the writ of certiorari should issue as prayed for.

Respectfully submitted,

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